

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
VERN A. EDWARDS:)
VERN A. AND DOREEN L. EDWARDS j

For Appellants: Vern A. Edwards,
in pro. per.

For Respondent: James T. Philbin,
Supervising Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Vern A. Edwards against a proposed assessment of additional personal income tax and penalties in the total amount of \$7,403.77 for the year 1978 and on the protest of Vern A. and Doreen L. Edwards against a proposed assessment of additional personal income tax and penalties in the total amount of \$657.80 for the year 1979.

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During the course of these proceedings; respondent has conceded that its original proposed assessments of tax and penalties should be reduced to \$321.10 and \$657.80 for the years 1978 and 1979, respectively. For each year these assessments include a 25 percent penalty for failure to file a return or to furnish information upon notice and demand (Rev. & Tax. Code, § 18683) and a five percent negligence penalty (Rev. & Tax. Code, § 18684). Respondent also acknowledges that appellants have made estimated tax payments of \$385.00 and \$500.00 for 1978 and 1979, respectively, and that the amount of any assessment must be offset by these amounts. Respondent's proposed assessments, reflecting its concessions, may be reflected as follows:

	<u>1978</u>	<u>1979</u>
Tax	\$247.00	\$506.00
Penalties	<u>74.10</u>	<u>\$151.80</u>
	\$321.10	\$657.80
Less: Estimated tax payments	(385.00)	(500.00)
Balance applied to 1979 liability	(63.90)	(63.90)
1979 balance due		<u>\$93.90</u>

The sole issue remaining for determination is whether the penalties were properly assessed.

After conducting a search by both name and social security number, respondent was unable to locate a 1978 return filed by Mr. Edwards (hereinafter appellant). On June 29, 1979, a letter of notice and a demand to file a 1978 return or to submit a copy thereof, if a return was filed, was sent to appellant. When no reply was forthcoming, respondent issued a notice of proposed assessment on December 18, 1979. Appellant protested this assessment but did not claim that any return had been filed for 1978. A protest hearing was held on March 27, 1980. At the hearing appellant made no claim that any return had been filed. The proposed assessment was affirmed on April 23, 1980 and appellant appealed on May 22, 1980. Once again appellant made no mention that any return had been filed. It was not until sometime after October 27, 1980 that appellant submitted a purported copy of his 1978 joint personal income tax return. Based upon information contained in the purported copy, respondent agreed to reduce its proposed assessment of tax and penalties to the amounts set out above.

The course of action for 1979 was basically the same. After an unsuccessful search for a 1979 return from appellant, respondent sent two letters of notice and demand to appellant. The first letter was sent on August 21, 1980 while the second letter was sent on September 11, 1980. When no response was received to either demand, respondent issued a notice of proposed assessment. Thereafter, appellant protested and submitted a purported copy of his joint 1979 return. When the parties were unable to agree on the amount due because of appellant's unsettled 1978 liability, appellants filed this appeal.

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At issue is the propriety of the notice and demand penalty and the negligence penalty assessed by respondent for each of the two years in issue.

Section 18683 of the Revenue and Taxation Code provides, in pertinent part:

If any taxpayer fails or refuses to furnish any information requested in writing by the Franchise Tax Board or fails or refuses to make and file a return required by this part upon notice and demand by the Franchise Tax Board, then, unless the failure is due to reasonable cause and not willful neglect, the Franchise Tax Board may add a penalty of 25 percent of the amount of the tax

Section 18684 of the Revenue and Taxation Code provides:

If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 percent of the total amount of the deficiency, in addition to the deficiency and other penalties provided in this article, shall be assessed, collected, and paid in the same manner as if it were a deficiency.

It is well settled that respondent's determinations of the penalties assessed in this appeal are presumptively correct, and the burden is upon the taxpayer to prove them erroneous (e.g., Appeal of Barbara P. Hutchinson, Cal. St. Bd. of Equal., June 29, 1982; Appeal of Arthur G. Horton, Jr., Cal. St. Bd. of Equal., Jan. 5, 1982.).

After a diligent search by name and by social security number, respondent was unable to locate appellant's return for either 1978 or 1979. While respondent does not, and cannot, claim that it has never lost a taxpayer's return, it is highly improbable that it would lose the same taxpayer's return for two successive years. Furthermore, it is reasonable to assume that if Mr. Edwards had, in fact, filed timely returns for 1978 and 1979, he would have submitted copies of the returns when formal demand was made therefor. Under these circumstances we must conclude that Mr. Edwards' actions were unreasonable and negligent. Although during the course of these appeals appellant has been a prolific correspondent with this board, he has offered us no reason to conclude otherwise. Therefore, respondent's action in assessing the penalties contained in sections 18683 and 18684 was proper and must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in these proceedings, and good cause appearing therefor,

IT- IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Vern A. Edwards against a proposed assessment of additional personal income tax and penalties in the total amount of \$7,403.77 for the year 1978 and on the protest of Vern A. and Doreen L. Edwards against a proposed assessment of additional personal income tax and penalties in the total amount of \$657.80 for the year 1979, be and the same is hereby modified in accordance with respondent's concessions. In all other respects, the action of the Franchise Tax Board is hereby sustained.

Done at Sacramento, California, this 7th day of December , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

<u>William M. Bennett</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Richard Nevins</u>	, Member
_____	Member
_____	Member